

**IN THE COURT OF APPEALS
OHIO FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO**

IBRAHIM MALLUF, dba MALLUF CONSULTING SERVICES,	:	APPEAL NO. C-080540 TRIAL NO. A-0706047
	:	
Plaintiff-Appellant,	:	<i>JUDGMENT ENTRY.</i>
	:	
vs.	:	
	:	
ECOM CONSULTING, INC.,	:	
	:	
Defendant/Third-Party Plaintiff-Appellee,	:	
	:	
vs.	:	
	:	
LYONS CONSULTING GROUP, INC.,	:	
	:	
Third-Party Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant Ibrahim Malluf was a software engineer residing in Hamilton County. He operated a business called Malluf Consulting Services. Defendant/third-party plaintiff-appellee Ecom Consulting was a Texas corporation, located in Plano. Third-party defendant-appellee Lyons Consulting Group was an Illinois corporation, located in Chicago.

Malluf had an agreement with Ecom to do information technology work on a contract basis. Ruud Lighting, a company in Wisconsin, hired Lyons Consulting to find IT contractors to work on a project. Lyons entered into an agreement with

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Ecom to hire Malluf as a contractor to work on the Ruud project. Malluf travelled to Racine, Wisconsin, to provide IT services to Ruud. Lyons fired Malluf after one week.

Malluf filed a breach-of-contract suit against Ecom in Hamilton County. Ecom filed a third-party complaint against Lyons. The trial court subsequently dismissed the case, without prejudice, on forum-non-conveniens grounds.

In two assignments of error, Malluf challenges the trial court's dismissal. The decision to dismiss litigation on the basis of forum non conveniens will only be reversed upon a showing that the trial court abused its discretion.² An abuse of discretion implies "not merely error of judgment, but perversity of will, passion, prejudice, partiality, or moral delinquency."³

When considering a dismissal, the court must consider the private interests of the litigants and the public interest involving the courts and citizens of the forum.⁴ Private interests include the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling witnesses; the cost of obtaining attendance of willing witnesses; and all other practical considerations that make trial of a case easy, expeditious, and inexpensive.⁵ The public interest includes the administrative difficulties and delay to other litigants caused by congested court calendars; the imposition of jury duty upon the citizens of a community that has very little relation to the litigation; a local interest in having localized controversies

² *Chambers v. Merrell-Dow Pharmaceuticals, Inc.* (1988), 35 Ohio St.3d 123, 519 N.E.2d 370.

³ *State ex rel. Commercial Lovelace Motor Freight, Inc. v. Lancaster* (1986), 22 Ohio St.3d 191, 193, 489 N.E.2d 288.

⁴ *Travelers Cas. & Sur. Co. v. Cincinnati Gas & Elec. Co.*, 169 Ohio App.3d 207, 2006-Ohio-5350, 862 N.E.2d 201, at ¶7, citing *Chambers v. Merrell-Dow Pharmaceuticals, Inc.* (1988), 35 Ohio St.3d 123, 126-127, 519 N.E.2d 370, and *Stidham v. Butsch*, 163 Ohio App.3d 227, 2005-Ohio-4591, 837 N.E.2d 433, at ¶8.

⁵ *Id.* at ¶8.

decided at home; and the appropriateness of litigating a case in a forum familiar with the applicable law.⁶ The ultimate inquiry is where a trial will best serve the convenience of the parties and the ends of justice.⁷

In this case, it was not an abuse of discretion to determine that the contacts with Ohio were too minimal, and that the litigation should be commenced in another forum. The parties argued the competing interests of the various venues, and the trial court concluded that Illinois (the location of Lyons and the venue in the choice-of-law provision in the contract between Econ and Lyons) was a more suitable forum. There was minimal relevant information in Hamilton County, and only one witness (Malluf) was located here. All other evidence and all other witnesses are in either Chicago, Illinois, or Racine, Wisconsin. Given the proximity of Chicago to Racine, Illinois was the best location to choose. Where the court has considered all relevant public- and private-interest factors, and where its balancing of these factors is reasonable, its decision deserves substantial deference.⁸ For these reasons, we overrule Malluf's two assignments of error.

Therefore, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., PAINTER and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on April 8, 2009
per order of the Court _____
Presiding Judge

⁶ Id. at ¶9.

⁷ *Chambers v. Merrell-Dow Pharmaceuticals* (1988), 35 Ohio St.3d 123, 127, 519 N.E.2d 370

⁸ Id.